

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SETTLEMENT AGREEMENT		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Endress+Hauser Process Solutions AG		01/01/2011	public company: SWITZERLAND
RECEIVING PARTY DATA			
Name:	Florists' Transworld Delivery, Inc.		
Street Address:	3113 Woodcreek Drive		
City:	Downers Grove		
State/Country:	ILLINOIS		
Postal Code:	60515		
Entity Type:	CORPORATION: MICHIGAN		
PROPERTY NUMBERS Total: 6			
Property Type	Number	Word Mark	
Registration Number:	0844748	FTD	
Registration Number:	1108614	FTD	
Registration Number:	1576429	FTD	
Registration Number:	2219418	FTD	
Registration Number:	2385454	FTD	
Registration Number:	2403957	FTD.COM	
CORRESPONDENCE DATA			
Fax Number:	(571)970-5692		
Phone:	703-683-0500		
Email:	mail@baconthomas.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	BACON & THOMAS, PLLC (Thomas J. Moore)		
Address Line 1:	625 Slaters Lane, Fourth Floor		
Address Line 4:	Alexandria, VIRGINIA 22314		

OP \$165.00 0844748

ATTORNEY DOCKET NUMBER:	FDTZ6002/TJM, 628-051
NAME OF SUBMITTER:	Thomas J. Moore
Signature:	/ThomasJMoore/
Date:	10/10/2011
Total Attachments: 6 source=2011-01-01 Settlement Agreement (Trademark FDT)#page1.tif source=2011-01-01 Settlement Agreement (Trademark FDT)#page2.tif source=2011-01-01 Settlement Agreement (Trademark FDT)#page3.tif source=2011-01-01 Settlement Agreement (Trademark FDT)#page4.tif source=2011-01-01 Settlement Agreement (Trademark FDT)#page5.tif source=2011-01-01 Settlement Agreement (Trademark FDT)#page6.tif	

SETTLEMENT AGREEMENT
(Trademark FDT)

THIS AGREEMENT is made effective January 1, 2011, by and between the following two parties:

Endress+Hauser Process Solutions AG having a place of business at Kagenstrasse 2, Reinach CH-4153, Switzerland (a public company under the law of Switzerland, referred to below as "Applicant"); and

Florists' Transworld Delivery, Inc., having a place of business at 3113 Woodcreek Drive, Downers Grove, IL 60515, U.S.A. (a corporation under the law of Michigan, U.S.A., referred to below as "Opposer").

WHEREAS, Applicant is the owner of U.S. Application No.79052907 (referred to below as the "Opposed Application") filed March 5, 2008, which requests registration of the trademark FDT for the

"design, development and rental of computer programs"; and

WHEREAS, Applicant is the owner of U.S. Application No. 77747706 filed May 29, 2009, which requests registration of the trademark FDT for

"electrotechnical and electronic apparatus and instruments including sensors and actuators; electrical apparatus for signaling, measuring, metering, recording, monitoring, controlling, regulating and switching including switches; electronic apparatus for encoding, processing, transmitting, recording and restoring data, especially of sensors and actuators in the industrial process measuring technology and the industrial process automation technology; component parts of apparatus and instruments, including switches, sensors and actuators; computer programs, especially, software packages and software modules for configuration, for initialization, for parameterization, for controlling, for maintenance, and for operation of sensors and actuators, especially of sensors and actuators in the industrial process measuring technology and the industrial process automation technology; data transmission protocols and their interfaces" in Class 9, and "printed matter including educational materials in the field of information and data technology, especially in the field of software packages and software modules for configuration, for initialization, for parameterization, for controlling, for maintenance, and for operation of sensors and actuators, especially of sensors and actuators in the industrial process measuring technology and the industrial process automation technology" in Class 16, and the "design, development and rental of computer programs, especially, software packages and software modules for configuration, for initialization, for parameterization, for controlling, for maintenance, and for operation of sensors and actuators, especially of sensors and actuators in the industrial process measuring technology and the industrial process automation technology" in Class 42; and

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WHEREAS, Applicant is the owner of U.S. Registration No. 3081138 granted April 18, 2006, of the trademark TheFDTshell for

“software, software packages and software modules for configuration, for initialization, for parameterization, for controlling, for maintenance, and for operation of sensors and actuators, especially of sensors and actuators in the industrial process measuring technology and the industrial process automation technology”; and

WHEREAS, Applicant is the owner of U.S. Registration No. 3159092 granted October 17, 2006, of the trademark pocketFDT for

“Software, in particular, device-specific software for measuring transmitters and sensors, controllers and recorders, namely, flow transmitters, pressure transmitters, pressure sensors, level transmitters for measuring the fill level of fluids or bulk material, level switches for detecting the fill level of fluids or bulk materials, temperature transmitters, analytical transmitters for analyzing the content of fluid media, pH-sensors, pH-transmitters, oxidation-reduction-potential-sensors, oxidation-reduction-potential-transmitters, conductivity sensors, conductivity transmitters, turbidity-sensors, turbidity-transmitters, gas-sensors, oxygen-transmitters, nitrogen transmitters, transmitters for the detection of total organic content in aqueous media, sludge level transmitters, water-samplers, spectrometric sensors, photometric sensors, recording apparatus, namely chart recorders, strip chart recorders, and paperless recorders, in the fields of industrial process instrumentation and industrial process automation”; and

WHEREAS, Opposer is the owner of U.S. Registration No. 844748 granted February 20, 1968, of the trademark FTD for

“association services-namely, promoting the interests of florists, assisting florists in development and operation of their business, arranging for exchange and delivery of goods among and by florists, and performing clearing house services for said florists”; and

WHEREAS, Opposer is the owner of U.S. Registration No. 1108614 granted December 12, 1978, of the trademark FTD for

“business forms, printed advertising aids; workshop handbooks; training and analysis kits which kits include fact compilations, pamphlets, and check sheets”; and

WHEREAS, Opposer is the owner of U.S. Registration No. 1576429 granted January 9, 1990, of the trademark FTD for

“baskets, bowls, planters, for plants, fruit, and floral arrangements” in Class 21, “plastic shopping bags” in Class 22, “clothing, namely, hats, aprons, golf caps, shirts, smocks” in Class 25, “telecommunications services, namely, electronic floral ordering and message services” in Class 38, and “mail order services featuring florist products; leasing of

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computer equipment, including consoles, modems, keyboards, video screens, personal computers, interface units, printers, and software for electronic mail, accounts payable, payroll, inventory control, and general ledger” in Class 42; and

WHEREAS, Opposer is the owner of U.S. Registration No. 2219418 granted January 19, 1999, of the trademark FTD for

“cooperative marketing and advertising in the field of ordering plants, flowers, and gifts, and providing business information in the field of ordering plants, flowers, and gifts via a global computer information network”; and

WHEREAS, Opposer is the owner of U.S. Registration No. 2385454 granted September 12, 2000, of the trademark FTD for

“computerized online, mail order, catalog, and telephone order retail services featuring candles, balloons, candy, gourmet food products, coffee, tea, pretzels, condiments, chocolate candy, cookies, cheese, crackers, bottled fruit juice, gift and flower baskets, coffee mugs, flower mugs, glass, ceramic, metal, and plastic containers, trays, pots, vases, jars, urns, and bowls, wrapping paper for flowers and gifts business forms, envelopes, stationery, driver’s route forms, order entry forms, invoices, computer paper, printer ribbons, data cartridges, shirts, aprons, jackets, coats, hats, pullovers, smocks, plush dolls, toys, silk flowers, artificial flowers, greeting cards, calendars, floral arrangement kits, signage and decals for windows, doors, floors, walls, and vehicles, plastic wrap, flower boxes, flower food and fertilizer, card and decorative pics, hanging decorative ornaments, ribbons for wrapping gifts, decorations for gift and flower arrangements, packaging, foil labels, and computer equipment and software”; and

WHEREAS, Opposer is the owner of U.S. Registration No. 2403957 granted November 14, 2000, of the trademark FTD.COM for

“operating a financial clearinghouse for the processing and exchange of credits and funds between retail businesses domestically and internationally” in Class 36, and “electronic order transmission services for florists and gift stores; providing telecommunication connections to a global computer network” in Class 38, and “domestic and international delivery of flowers, floral arrangements, plants, fruit, and gift orders by truck and airplane” in Class 39; and

WHEREAS, the Opposed Application was published for opposition in the Official Gazette of the U.S. Patent and Trademark Office dated December 15, 2009; and

WHEREAS, on April 8, 2010, Opposer filed a Notice of Opposition against the Opposed Application, namely, Opposition No. 91194481 (referred to below as the “Pending Opposition”) after obtaining an extension of time to oppose; and

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WHEREAS, Applicant and Opposer are desirous of reaching settlement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Applicant shall not use, seek to register, and/or register the mark FDT or any colorable imitation thereof, for any goods or service *outside* the fields of industrial process instrumentation and industrial process automation.

2. Opposer shall not use, seek to register, and/or register the mark FDT for any goods or service in the fields of industrial process instrumentation and industrial process automation.

3. Opposer shall not object to Applicant's use and/or registration of the mark FDT for goods and services in the fields of industrial process instrumentation and industrial process automation. Opposer shall not object to Applicant's licensed use of third parties of the mark FDT for goods and services in the fields of industrial process instrumentation and industrial process automation.

4. Opposer shall not object to Applicant's use and/or registration of the mark TheFDTshell for goods and services in the fields of industrial process instrumentation and industrial process automation. Opposer shall not object to Applicant's licensed use of third parties of the mark TheFDTshell for goods and services in the fields of industrial process instrumentation and industrial process automation.

5. Opposer shall not object to Applicant's use and/or registration of the mark pocketFDT for goods and services in the fields of industrial process instrumentation and industrial process automation. Opposer shall not object to Applicant's licensed use to third parties of the mark pocketFDT for goods and services in the fields of industrial process instrumentation and industrial process automation.

6. Within fourteen (14) calendar days after each party receives a fully executed copy of this Agreement, Opposer and Applicant will stipulate to (1) an amendment of the goods of the Opposed Application to add the limitation "in the fields of industrial process instrumentation and industrial process automation" and (2) if such amendment is entered by the U.S. Patent and Trademark Office, then a dismissal with prejudice of the Pending Opposition. If such amendment is not entered, then the parties agree to discuss a possible settlement on other terms.

7. This Agreement constitutes and contains the entire agreement and understanding concerning the subject matter hereof as between the parties, and supersedes and replaces all prior negotiations and proposed agreements, written or oral, as between them. Each party hereto acknowledges that no party has made any promise, representation or warranty, express or

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implied, written or oral, not contained herein, concerning the subject matter hereof to induce it, as the case may be, to execute this Agreement, and that it has not executed this Agreement in reliance on any promise, representation, or warranty not contained herein.

8 A waiver of any breach of this Agreement shall not constitute a waiver of any other breach of this Agreement. The parties acknowledge that a breach of this Agreement may require an injunction for the specific performance of this Agreement, because any other remedy may be inadequate.

9 All notices and other communications required or permitted under this Agreement, shall be made as follows:

In the case of Opposer:

Florists' Transworld Delivery, Inc.
Jon Burney, General Counsel
3113 Woodcreek Drive
Downers Grove, IL 60515, U.S.A.
Fax: 630-724-6651
Email: JBurney@ftdi.com

In the case of Applicant:

Endress+Hauser (Deutschland) AG + Co. KG
PatServe, Colmarer Str. 6
D-79576 Weil am Rhein, Germany
Fax: +49-7621-975-888
Email: anna.gottschalk@patserve.endress.com

10 All notices or other communications shall be made initially by facsimile or email, if possible, and then confirmed by postal air mail or express courier service. Each party may change its notice address (stated above) by a signed written notice to the other party.

11 This Agreement and its terms and conditions shall be binding upon the parties and their successors and assigns and all others acting by, through, or with them or under their authority or direction or in privity with them; and this Agreement shall inure to the benefit of the successors and assigns of the parties.

12 This Agreement shall have perpetual duration unless: (a) Opposer and any affiliates, parents, subsidiaries, successors and/or assigns of Opposer, completely and permanently abandon all marks consisting of or comprising the term "FDT"; or (b) Applicant and any affiliates, parents, subsidiaries, successors and/or assigns of Applicant, completely and permanently abandon all marks consisting of or comprising the term "FDT." In the event of (a) or (b), this Agreement is terminated. This Agreement shall be terminated if it is breached, provided that a notice of breach is made according to paragraph 9, and the allegedly breaching party shall have thirty days to cure the breach after receipt of such notice.

13 All rights not expressly granted in this Agreement are reserved.

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14 The geographic scope of this Agreement is worldwide.

15 The terms and conditions of this Agreement or any part hereof may be amended only by writing executed by both parties.

16 If any of the provisions of this Agreement is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and, if such provision cannot be restated by a court of competent jurisdiction to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

17 Each of the parties warrants and represents that each is the owner of the respective marks, registrations and applications as stated in this Agreement; it has the capacity and right to enter into this Agreement; that it has not assigned or otherwise transferred in any manner rights or duties which would relieve it from fulfilling the terms and conditions hereof; that it intends to be bound by the terms and conditions of this Agreement; that this Agreement was fully negotiated by the parties and that none of the provisions hereof is to be considered as having been drafted by either party; and that it consents to the terms and conditions of this Agreement.

18 Each party shall bear its own costs and attorneys' fees in this matter.

19 This Agreement may be executed in duplicate and may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20 Each of the signatories to this Agreement represents and warrants that he or she has the full right, power and authority to execute the same and to bind the party for which he or she is signing.

WHEREFORE, this Agreement has been agreed to and executed by the parties below:

Florists' Transworld Delivery, Inc.

By: _____

Name: John W. Burney

Position: E.V.P.

Date: June 8, 2011

Endress+Hauser Process Solutions AG:

By: _____

Name: Summer Kraft

Position: MD, Controlling

Date: May 16th, 2011